IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11434 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANDYA MAHENDRAKUMAR AMBALAL - Petitioner(s)
Versus
ELLECTION OFFICER- AMBAJI GRAM PANCHAYAT & 5 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 6.
MS TRUSHA PATEL AGP for Respondent (s) : 1
MR DHAVAL M BAROT for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/06/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Leave to amend.

2. Elections to the Ambaji Gram Panchayat were held on

8.4.2007 and the results were declared on 10.4.2007. The petitioner was elected as a member of the Gram Panchayat. The Taluka Development Officer issued notice on 21.4.2007 convening the meeting of the Gram Panchayat for holding the election of Deputy Sarpanch on 30.4.2007. On 21.4.2007 itself respondent No.3 herein filed the election petition challenging the election of Rameshbhai Ishwarbhai Rathod from ward No.16 and on the same date, respondent No.3 also filed application Exh.11 for interim stay of the election of Dy. Sarpanch. On 23.4.2007, the learned Judge granted ad-interim stay against the election of Dy. Sarpanch till 5.5.2007. The petitioner herein being one of the members of the Ambaji Gram Panchayat challenged the said order and while entertaining the petition on 27.4.2007, we fixed the matter for early final disposal and we also granted ad-interim stay of the order dated 21/23.4.2007 passed by the Election Tribunal below application Exh.11 in the election petition filed by respondent No.3 herein. We also clarified that the election of Dy. Sarpanch may be held as scheduled and the results may also be declared, but the same shall be subject to the result of this petition. We also directed that the vote cast by respondent No.2 herein i.e. Rameshbhai Ishwarbhai Rathod the member elected from ward No.16 of Ambaji Gram Panchayat shall also be subject to the result of the petition.

3. In spite of notice, none appeared for respondent No.3 herein -original petitioner in the election petition. The hearing was thereafter adjourned beyond the summer vacation. Today also, none appears for the said party.

4. Mr PK Jani, learned counsel for the present petitioner as well as Ms Trusha Patel, learned AGP for Mamlatdar and Executive Magistrate, Danta who was the Election Officer, and Mr Dhaval Barot for Taluka Development Officer, Danta – respondent No.5, state that the election of Dy. Sarpanch of Ambaji Gram

Panchayat took place on 30.4.2007 and one Mr Jayantibhai B Joshi was elected uncontested as Dy. Sarpanch of the Ambaji Gram Panchayat. A copy of the resolution is also produced at Annexure-E to the petition as per the draft amendment granted today.

5. In view of the above uncontested election of Dy. Sarpanch of Ambaji Gram Panchayat, it is absolutely clear that application Exh.11 itself would not survive. The entire application was based on the assumption that participation of respondent No.2 herein i.e. the member elected from ward No.16 whose election was challenged in the election petition filed by respondent No.3 herein, would tilt the balance in favour of one or another candidate at the election of Dy. Sarpanch. However, since the Dy. Sarpanch has in the meantime been elected uncontested on 30.4.2007, no grievance can possibly be made by respondent No.3 herein – the petitioner in the election petition. This factual aspect is sufficient to allow the petition and to set aside the order dated 21/23.4.2007 passed by the learned Principal Civil Judge, Danta below application Exh.11 in Election Petition No.1 of 2007.

6. Even while allowing the petition on the above ground, we cannot help observing that the the learned Judge ought not to have granted ad-interim/interim stay of election of Dy. Sarpanch in such a casual manner. Article 243-O of the Constitution of India clearly provides that no election to any Panchayat shall be called in question except by an election petition presented to the Election Tribunal as provided by or under any law made by the State Legislature.

What was challenged in Election Petition No.1 of 2007 was the election of respondent No.2 as a member of Ambaji Gram Panchayat from ward No.16. In such an election petition there could not be any question of granting stay of the election of Dy.

Sarpanch of the Gram Panchayat. The Election Tribunal was, therefore, not at all justified in granting any such stay against the election of Dy. Sarpanch.

7. The petition is accordingly allowed. The impugned order dated 21/23.4.2007 passed by the Election Tribunal and Principal Civil Judge, Danta below application Exh.11 in Election Petition No.1 of 2007 is hereby quashed and set aside.

A copy of this judgment shall be circulated to all the Senior Civil Judges and Civil Judges in the State.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/-